

## Chapter 5-9 Noise

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Adopted by Ordinance No. 7358.

### 5-9-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by defining those noises and sounds which by their volume or other physical characteristics, and, depending on their time, place, and manner, disturb people of normal sensitivity, and to regulate such noises and sounds to the extent that can be done without detrimentally affecting necessary residential, commercial, and governmental activities<sup>fn</sup>. It is not the intention of the council to differentiate on the basis of the content, if there be any, of the prohibited sounds. However, in certain instances the council finds that there is a compelling governmental interest in making an exception for the loudness of certain sounds, such as warnings of imminent hazard.

<sup>fn</sup>For other provisions involving noise, see Sections 7-3-4, "Adequate Muffling of Noise Required," and 6-1-19, "Barking, Howling, or Other Unreasonable Animal Noise Prohibited," B.R.C. 1981.

### 5-9-2 Definitions.

As used in this chapter, the following words are defined to mean:

"Commercial district" or "commercial zone" or "commercial" means any area zoned A, BMS, CB, MU, P, TB, RB, RB1, RB2, RB3, or RMS.

"Group living arrangement" means those group residencies in which the individual or family lives in a room or rooms of their own, but which contains common dining facilities and where decisions concerning the use of common areas for social events are shared among the individual residents. These include, without limitation, cooperative housing units, congregate or residential care facilities, rooming houses, dormitories, fraternities, and sororities, as those terms are used in Title 9, "Land Use Regulation," B.R.C. 1981. These exclude buildings where people only reside temporarily such as hotels, motels, or bed and breakfasts, and buildings where each person resides in and controls a complete dwelling unit, including, without limitation, duplexes, tri-plexes, four-plexes, apartment buildings, and condominiums.

"Industrial district" or "industrial zone" or "industrial" means any area zoned IG, IM, IS, or IMS.

"Light construction work" means work which uses only hand tools and power tools of no more than five horsepower, but not including power actuated fastening devices (e.g., nail guns).

"Residential district" or "residential zone" or "residential" means any area zoned ER, HR, HZ, LR, MH, MR, MXR, RR, or RR1.

"Zoned" means classified into one of the zoning districts specified in Section 9-2-1, "Zoning Districts Established," B.R.C. 1981, as shown on the zoning map adopted by that section. Each district includes all areas zoned under the same prefix (i.e., LR includes LR-E and LR-D). If new districts are established without amendment to this section, it is intended that the new district be governed under this chapter as if in the existing district which it most closely resembles, and if it could as easily be in one category or another, that it be in the category with the lower allowable decibel levels.

### 5-9-3 Exceeding Decibel Sound Levels Prohibited.

(a) No person shall:

(1) Operate any type of vehicle, machine, or device;

(2) Carry on any activity; or

(3) Promote or facilitate the carrying on of any activity, which makes sound in excess of the level specified in this section.

(b) Sound from any source, other than a moving vehicular source located within the public right-of-way, shall not exceed any of the following limits for its appropriate zone:

(1) The sound limits prescribed by this section are set forth in the following table:

Zoning District of the Property on Which the Sound is Received

Maximum Number of Decibels Permitted from 7:00 a.m. until 11:00 p.m. of the Same Day

Maximum Number of Decibels Permitted from 11:00 p.m. until 7:00 a.m. of the Following Day

Residential

55 dBA

50 dBA

Commercial and other

65 dBA

60 dBA

Industrial

80 dBA

75 dBA

(2) Sound from construction work for which a building permit has been issued:

(A) During the hours of 7:00 a.m. to 5:00 p.m., sound for work of any type shall be deemed received in an industrial zoning district;

(B) During the hours of 5:00 p.m. until 9:00 p.m., sound from light construction work received in a residential zone shall be deemed received in a commercial zoning district; and

(C) Under no circumstances shall amplified sound be considered as construction work activity.

(3) Sound from a source regulated by this subsection:

(A) Sound from a source on private property shall be measured at or inside the property line of property other than that on which the sound source is located;

(B) Sound from a source on public property may be measured on that receiving property so long as the measurement is taken at least twenty-five feet from the source, or it may be measured at or inside the property line of receiving property other than the public property on which the sound source is located;

(C) For the purposes of this paragraph, a leasehold shall be deemed a property of the lessee, and its boundary, other than a boundary with adjacent property owned by the lessee, shall be deemed a property line.

(c) All sound measurements shall be made on a sound level meter that meets ANSI specification S1.4-1974 for Type I or Type II equipment. The manufacturer's published indication of compliance with such specifications is prima facie evidence of compliance with this subsection.

(d) It shall be a defense to a charge of violating this section that:

(1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(3) The sound was made within the terms of a fireworks display or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;

(4) The sound was made by an animal;

(5) The sound was made within the terms and conditions of a sound level variance granted by the city manager;

(6) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(7) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(8) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow; or

(9) The sound was made between the hours of 7:00 a.m. and 9:00 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair.

(e) This section shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state.

#### 5-9-4 Exceeding Decibel Sound Levels from a Motor Vehicle Prohibited.

(a) Sound from a motor vehicle located within the public right-of-way shall not exceed eighty decibels on the "A" weighting scale (dBA), except that sound from a vehicle with a manufacturer's gross weight rating of ten thousand pounds and above may exceed eighty dBA but shall not exceed eighty-eight dBA. Such sound shall be measured at a distance of at least twenty-five feet from a vehicle located within the public right-of-way.

(b) Such sound measurements shall be made on a sound level meter that meets the requirements of Subsection 5-9-3(c), B.R.C. 1981.

(c) It shall be an affirmative defense to a charge of violating this section that:

(1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(3) The sound was made within the terms and conditions of a sound level variance granted by the city manager;

(4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes; or

(5) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow.

#### 5-9-5 Disrupting Quiet Enjoyment of Home.

(a) No person shall engage in, or be responsible for, a course of conduct which is so loud that it materially interferes with or disrupts another individual in the conduct of activities at such individual's home.

(b) The following standards and definitions shall be used in the application of this section:

(1) The person engaging in such conduct must be at a location other than the complainant's home.

(2) "Home" includes the physical residence as well as the outside premises.

(3) "Another individual" includes all members of the household as well as others rightfully in the residence or on the premises.

(4) No person shall be convicted of a violation of this section unless that person has been warned that conduct violating this section is occurring or has recently occurred and, following such warning, the conduct is repeated or continued.

(A) No additional warning need be issued as a precondition to enforcement of this provision if similar conduct occurred within the previous ninety days and if a warning was communicated to an individual regarding his or her role in that past

conduct.

(B) A prior warning shall be sufficient with respect to each of the residents of an individual dwelling unit at which a prior noise incident occurred (including any resident in a group living arrangement), if, after a personal communication was made to a person who engaged in conduct subject to the provisions of this section, the city manager caused a warning letter to be sent by first class mail addressed to "residents" of the dwelling unit in which the person who received the prior warning resided at the time of the issuance of the prior warning and at which the prior noise incident occurred. If a warning was attempted but could not be personally communicated because no one would answer the door or the person engaged in the conduct could not be identified, a warning letter under this subparagraph shall be sufficient.

(C) No warning under this paragraph is required if the conduct would violate Subsection 5-9-6(b) , B.R.C. 1981, concerning unreasonable unamplified sound, and it originated on private property.

(5) If conduct violative of this section:

(A) Originates upon private property;

(B) The owner or some other person with authority to control that property is present at the time that such occurs; and

(C) The owner or authorized person has received a communication requesting cessation or reduction in the level;

then the owner or authorized person is also responsible for the repeated or continued conduct under this section, even though not directly engaged in the conduct.

(6) Whether or not noise is "so loud that it materially interferes with or disrupts" shall be measured against the objective standard of a reasonable person of normal sensitivity.

(7) It shall be an affirmative defense to a charge of violating this section that:

(A) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(C) The sound was made within the terms of a parade, fireworks display, or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;

(D) The sound was made by an animal;

(E) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(F) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(G) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow;

(H) The sound was made between the hours of 7:00 a.m. and 9:00 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair; or

(I) The loud conduct consisted solely of natural speech or communication by or between people, unless such conduct was used as a guise materially to interfere with or disrupt another individual in the conduct of activities at the individual's home and that was the result.

(8) It is not a defense to a charge of violation of this section that the sound levels complied with the requirements of Section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," B.R.C. 1981.

fnAnimal noises are covered in Chapter 6-1, "Animals," B.R.C. 1981.

#### 5-9-6 Unreasonable Noise Prohibited Between the Hours of 11:00 p.m. through 7:00 a.m.

Between the hours of 11:00 p.m. through 7:00 a.m., no person shall:

(a) Amplified Sound: Electronically amplify any sound, or make any noise by means of any electronic amplifier, which is loud enough to be audible to a person of normal hearing:

(1) One hundred or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a residential district; or

(2) One hundred fifty or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a commercial or industrial district.

(3) Each resident or person in control of an activity or event in or on the premises of a dwelling unit who is present within that dwelling unit or upon the premises of that dwelling unit when sound in violation of this section is amplified or generated upon the premises shall be responsible for the generation of that sound or noise.

(4) Each owner, manager, or person in control of an activity or event in or on the premises of a commercial or industrial property upon which sound in violation of this subsection is generated shall be responsible for the generation of that sound or noise.

(5) It shall be an affirmative defense to a charge of violating this subsection that:

(A) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;

(B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(C) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager;

(D) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(E) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(F) For a charge of violation based on paragraph (a)(3) or (a)(4) of this section, the defendant did all that a reasonable person could have done under the circumstances of the creation of the noise to prevent the offense, and, if requested to do so, cooperated with law enforcement officers to identify accurately the offender or offenders; or

(G) For a charge of violation based on paragraph (a)(4) of this section, the sound was made by a trespasser.

(b) Unreasonable Unamplified Sound:

(1) While on public property within a residential district, no person shall yell, scream, shout, cheer, sing, or otherwise make noise with the human voice louder than that which is reasonably necessary for normal conversational speech.

(2) It shall be an affirmative defense to a charge of violating this subsection that the sound was reasonably necessary to gain assistance to prevent a crime, catch a criminal, warn of fire or other danger, or to seek assistance for a health problem or injury or for assistance in dealing with an accident.

(c) Trash Pickup: No person shall make any trash pickup with a truck which has a compactor or the capacity to raise and dump dumpsters in any residential or commercial district, and no employer shall fail to prevent its employee from violating this subsection while the employee is driving a trash truck owned by or under the control of the employer. For the purposes of this subsection, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash truck was owned by or was under the control of the employer so identified.

5-9-7 Unreasonable Noise Prohibited Between the Hours of 9:00 p.m. through 7:00 a.m. - Lawn Mowers, Leaf Blowers, and Construction.

Between the hours of 9:00 p.m. through 7:00 a.m., no person shall:

(a) Lawn Mowers and Leaf Blowers: Operate any lawn mower, leaf blower, or other power lawn or gardening tool on any private property within, or within one hundred feet of the boundary of, any residential district.

(b) Construction in a Residential Zone: In a residential zone, use power tools which are audible off the property upon which they are being used as part of construction work for which a building permit has been issued or is required for the work.

5-9-8 Unreasonable Noise Prohibited at Any Time - Motor Vehicle Amplified Sound.

(a) No person shall operate any electronic amplifier in or attached to any motor vehicle so that the sound is audible at a distance of twenty-five feet or more from the motor vehicle, or which emits vibrations which can be felt by persons outside of that vehicle. This prohibition does not apply to sound made on private property with the permission of the property owner and not audible or palpable beyond the property line.

(b) It shall be an affirmative defense to a charge of violating this section that:

- (1) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;
- (2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
- (3) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager; or
- (4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes.

#### 5-9-9 Certain Musical Instruments Prohibited on the Mall between 12:00 a.m. and 7:00 a.m.

No person shall play any percussive or amplified musical instrument on the mall between the hours of 12:00 a.m. and 7:00 a.m.

#### 5-9-10 Sound Variances.

(a) Decibel Variance: A variance shall be granted for the decibel limits of Section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," or 5-9-4, "Exceeding Decibel Sound Levels from a Motor Vehicle Prohibited," B.R.C. 1981, after application is made if the city manager finds that compliance will cause an undue hardship and further finds that:

- (1) Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or
- (2) The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this section.

In either case, the manager must also find that no reasonable alternative is available to the applicant. If the manager grants a variance, the manager shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(b) Trash Variance: Trash haulers may apply to the city manager for a variance of the provisions of Subsection 5-9-6(c), B.R.C. 1981, for locations within a commercial district. Possession of a valid variance shall be a specific defense to any charge under Subsection 5-9-6(c), B.R.C. 1981, if the act complained of was within the variance granted. The manager may grant all or a part of any requested variance, and may place such conditions upon any variance granted as are reasonably suited to limit the harmful effects of the variance. Such variances shall be granted only if the applicant can demonstrate to the manager's satisfaction:

- (1) That the location in question is sufficiently removed from any residential use that the noise of trash removal will not disturb anyone in their residence, including, without limitation, hotel and motel accommodations; or
- (2) That the location cannot feasibly be serviced during permitted hours, and that the variance is the least necessary to permit trash removal while still assuring nearby residents reasonable nocturnal quiet.

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